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Article 9: Secured Transactions; Sales of Accounts, Contract Rights and Chattel Paper

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ARTICLE 8: INVESTMENT SECURITIES

SECTION 8-101. *Investment Securities*

Le Savoy Industries v. Pennsylvania General Paper Corp., 404 Pa. 161, 171 A.2d 148 (1961).

Under a Pennsylvania statute permitting extraterritorial service of process if the subject matter is within the jurisdiction of the court, stock of the corporation has its situs where the stock certificate is situated. Although there is no express Code provision as to the situs of stock, the court reaches its decision by reference to the Uniform Stock Transfer Act, which was law in Pennsylvania prior to the Code and which was repealed by the Code. It declares that the Uniform Stock Transfer Act and its policy in making the stock certificate represent the shares of stock (a change from the common law rule) are embodied in the Code. Hence, there was no Pennsylvania jurisdiction over a New York shareholder served in New York when the stock certificates representing his shares were also in that state.

[Annotator's Comment: The decision is borne out by language in the Code itself which seems to regard the stock certificate as representing the shares of stock. The Code's definition of a security in Section 8-102 is "an instrument which evidences a share, participation or other interest in property or in an enterprise or evidences an obligation of the issuer." Under Section 8-301, upon delivery of a security, the transferee acquires the rights of the transferor in the security. Furthermore, in a situation which is analogous to the service of process issue in the instant case, the Code requires, under Section 8-317, actual seizure of the security for a valid levy or attachment.]

ARTICLE 9: SECURED TRANSACTIONS; SALES OF ACCOUNTS,
CONTRACT RIGHTS AND CHATTEL PAPER

SECTION 9-103. *Accounts, Contract Rights, General Intangibles and Equipment Relating to Another Jurisdiction; and Incoming Goods Already Subject to a Security Interest*

(3) If the security interest was already perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into this state, the security interest continues perfected in this state for four months . . .

Casterline v. General Motors Acceptance Company, 171 A.2d 813 (Pa. 1961).

Where the assignee of a conditional sales contract in New York protects his security interest by filing within the ten-day period allowed

(Where a cited case interprets only a portion of a Code section only that portion is set out)

by the Uniform Conditional Sales Act which is law in New York, but at a time after the property has been brought into Pennsylvania by a subsequent purchaser, the assignee's security interest is perfected in Pennsylvania even though it is not noted upon the Pennsylvania certificate of title as required for "perfection" under Code Section 9-302(3)(b) in conjunction with the Motor Vehicle Code of Pennsylvania. The security interest is prior to the interest of one who possesses an unencumbered Pennsylvania certificate of title. The court bases its decision on (1) the determination that the purpose of filing in New York is similar to the purpose of perfection under the Code, so that one who files in New York should be protected to the same extent as a Pennsylvania holder of a perfected security interest; and (2) its conclusion that under New York law the security interest was perfected immediately upon execution of the security agreement, but subject to losing its priority if the contract was not filed within the proper time. Therefore, "perfection" under the Code means only that the security interest is protected generally in the foreign state against classes of purchasers, creditors, and lien holders against whom a perfected security interest is protected in Pennsylvania, not that there be an exact parallel between the Uniform Commercial Code and the law of the foreign state.

[*N.B.* This case was decided under the 1953 draft of the Code, in which Section 9-103 read:

"(3) If the security interest was already perfected under the law of the jurisdiction where the property was kept before being brought into this state, the security interest continues perfected here for four months. . . .]

[Annotator's Comment: An interesting contrast may be made between the provisions under the Uniform Commercial Code in Pennsylvania and those under the Uniform Conditional Sales Act in New York as to secured property coming from one state into the other. In Pennsylvania, the secured interest is protected for four months after removal, provided it was perfected in New York. Thereafter, it must be perfected according to Pennsylvania law. Pa. Stat. Ann. tit. 12A, § 9-103. In New York the foreign secured party, in order to protect his interest, must file in the filing district to which the goods are removed within ten days after receiving notice that the goods have been removed to that state—i.e., if he files within ten days, his protection extends prior to the filing; otherwise, it extends only subsequently to the filing. N.Y. Pers. Prop. Law § 74. However, in New York, the secured party is protected even without filing against a subsequent purchaser with notice. N.Y. Pers. Prop. Law § 65. This may be very important to a secured party of Pennsylvania or other certificate of title state, because it is the practice in New York to demand surrender of foreign certificates of title as a condition to New York registration. Thus, in many

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cases, the certificate of title from Pennsylvania with the security interest conspicuously noted thereon could serve as notice to a subsequent purchaser in New York.]

SECTION 9-302. When Filing Is Required to Perfect Security Interest; Security Interests to Which Filing Provisions of this Article Do Not Apply

(3) The filing provisions of this Article do not apply to a security interest in property subject to a statute

(b) of this state which provides for central filing of, or which requires indication on a certificate of title of, such security interests in such property.

Sterling Acceptance Co. v. Grimes, 194 Pa. Super. 503, 168 A.2d 600 (1961)

An acceptance company which had its security interest on the inventory of a car dealer perfected according to Section 9-302(1) could not recover a new automobile purchased subsequently by the defendant from that car dealer's inventory. The acceptance company attempted to avoid the application of the Uniform Commercial Code by pleading this section. The court held that the Vehicle Code of Pennsylvania, which states that "the certificate of title when issued by the secretary showing a lien or encumbrance shall be adequate notice . . . that a lien . . . exists . . ." is not such a statute as that referred to in Section 9-302(3)(b) in the case of the sale of a new automobile, because the Vehicle Code does not require dealers to obtain certificates of title for new automobiles until the sale thereof. Thus, the court concludes, "the legislature did not intend to have the rights of buyers of new automobiles set forth in the Uniform Commercial Code defeated by lien creditors of the dealer, through the notings of encumbrances upon dealers' certificates of title which were not required and generally were not issued."

[*N.B.* This case was decided under the 1953 draft of the Code which carried this section as Section 9-302(2)(b).]

[Annotator's Comment: Although the decision is correct, the reasoning of the court and its clear implication that if the car were a used one, the acceptance company could recover it because certificates of title were required for used cars seem erroneous. The court seems to err by treating Section 9-302(3)(b) as a clause completely excluding certain situations from the operation of the Uniform Commercial Code, which it does not do. Section 9-302(3)(b) merely exempts from the Code filing required for perfection certain situations which are covered by other filing or certificate of title statutes. Perfection may be obtained

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in these situations by complying with the other statute rather than filing under the Code. However, Section 9-307 protects the buyer of inventory in the ordinary course of business even though a prior security interest is perfected. Thus, the buyer of even a used car from inventory would prevail because his interest is prior to the perfected status attained through Section 9-302(3)(b) by compliance with the Pennsylvania Motor Vehicle Code.]

Lincoln Bank and Trust Co. v. Queenan, 344 S.W.2d 383 (Ky. 1961)

A statute, Ky. Rev. Stat. Ann. 186.195 (1959), providing that, upon execution of a lien upon a motor vehicle, the secured party must deliver the registration receipt of the owner to the county clerk for recordation of the lien upon it, is not such a statute as that referred to in Section 9-302(3)(b). Although the registration receipt is made substantially the equivalent of a certificate of title, the court concludes that the statute was not intended to be a means of perfecting a security interest. It bases this determination, *inter alia*, upon the fact that another statute requires that the lien instrument mentioned in Ken. Rev. Stat. 186.195 be filed according to the Code, just as other financing statements.

However, because no express penalty is provided for a failure to comply with 186.195, the court determines that compliance with it is a condition precedent to filing the security transaction under the Code, except in the case of a dealer's inventory, where such a requirement would be impractical. Thus, the secured party must both send the registration receipt to the county clerk and file his financing statement as required by Code Section 9-302(1).

[Annotator's Comment: The Kentucky legislature unnecessarily violated a fundamental policy of the Uniform Commercial Code by a statute compliance with which the court construes as a condition precedent to filing under Section 9-302(1). A purpose of the Code, declared in Section 1-102(2)(a) is to simplify commercial law. The result in the instant case is unnecessary additional red tape. Rather than the one step prescribed by the Code, the secured party must now perform two distinct steps to protect his interest.

If the legislature desired the registration receipt requirement as a preferable method for perfection of security interests, it should not have required also filing under the Code. Section 9-302(3)(b) would have allowed this substitute for the Code's filing requirement had the statute been properly drafted. Although enacted very shortly after the Uniform Commercial Code, the statute makes no effort to complement it; even terms not found in the Code, such as "lien instrument," are introduced. The court was justified in its restrained impatience with legislature.]

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SECTION 9-307. Protection of Buyers of Goods

(2) A buyer in ordinary course of business . . . takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

Sterling Acceptance Co. v. Grimes, 194 Pa. Super. 503, 168 A.2d 600 (1961).

An acceptance company which had filed according to Section 9-302(1) its blanket security agreement covering the inventory proceeds from sales of a certain automobile dealer could not recover an automobile purchased by the defendant from the automobile dealer after the filing of the security agreement. For a further discussion of this case, see *supra*, Section 9-302.

[N.B. This case was decided under the 1953 draft of the Code, Section 9-307 of which read: "In the case of inventory . . . a buyer in ordinary course of business takes free of a security interest even though perfected and even though the buyer knows of the terms of the security agreement."]

SECTION 9-402. Formal Requisites of Financing Statements

(1) A financing statement is sufficient if it is signed by the debtor and the secured party, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. . . .

Lincoln Bank and Trust Co. v. Queenan, 344 S.W.2d 383 (Ky. 1961)

The court held that several Kentucky statutes had no application to the field of secured transactions because of their inconsistency with the Code. These statutes included: (a) one declaring that no deed of trust or mortgage shall be valid against innocent third parties unless "acknowledged or proved according to law and lodged for record" (the Code requires no acknowledgment); and (b) one declaring that no deed, deed of trust, or mortgage may be recorded unless it states the date and maturity of the secured obligation (this is in conflict with Code Section 9-403, which holds that a financing statement is effective for five years from the date of filing if the date is not shown on the instrument or if the period on the instrument extends for more than five years). Another such statute, relating to Section 9-302(3), is discussed *supra*.

The court noted that, although several other statutes had been expressly repealed by the act adopting the Code, the discovery of inconsistencies and obsolete matter was a formidable task requiring years, rather than a simple search by a legislative committee.

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A dissenting opinion, noting the omission of the general repealer section of the Code in the Kentucky enactment, expresses the view that these two statutes are not repealed by implication. The dissent believes that there should be no repeal by implication unless statutes are necessarily inconsistent. This is not the case here, since, even with the adoption of the Code, the two statutes which the majority is overthrowing in the area of secured transactions serve a worthwhile purpose in that area, as evidenced by the fact that the legislature has recently retained similar requirements in other statutes. The dissent also notes that other sections of the same chapter which contains these two statutes have been expressly repealed by the act adopting the Code.

[Annotator's Comment: The decision as to these two statutes is in accord with the policy of the Code to simplify commercial law (Section 1-102(2)(a)). It is noteworthy that this result is reached in spite of the legislature's failure to include the general repealer section of the Code (Section 10-103). See *supra*, Section 9-302(3)(b) for further discussion of this case.]

SECTION 9-403. What Constitutes Filing; Duration of Filing; Effect of Lapsed Filing; Duties of Filing Officer

(2) A filed financing statement which states a maturity date of the obligation secured of five years or less is effective until such maturity date. . . . Any other filed financing statement is effective for a period of five years from the date of filing.

Lincoln Bank and Trust Co. v. Queenan, 344 S.W.2d 383 (Ky. 1961)

See Section 9-402 *supra*, for the annotation of this case in respect to this section.

SECTION 9-504. Secured Party's Right to Dispose of Collateral after Default; Effect of Disposition

(3) Unless collateral . . . is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or intended disposition is to be made shall be sent by the secured party to the debtor.

Alliance Discount Corp. v. Shaw, 171 A.2d 548 (Pa. 1961)

Notice must be given a debtor upon the proposed resale of a repossessed used car since there is no recognized market for used cars. Prices of such cars are subject to a wide range of pricing procedures and are not arrived at in the open, based upon asking prices of sellers and bids of prospective buyers. Prices quoted in the "red book" are not sell and bid prices, but are merely for the convenience of the dealer.

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SECTION 9-507. Secured Party's Liability for Failure to Comply with this Part

Alliance Discount Corp. v. Shaw, 171 A.2d 548 (Pa. 1961)

Debtor could have deficiency judgment opened after resale of repossessed used car where it was shown, *inter alia*, that the required notice of Section 9-504(3) had not been given debtor prior to the sale. While the rights of Section 9-504 (*Sic*; 9-507?) are available to the debtor, there is no limitation upon the means of exercising them.

[Annotator's Comment: Since plaintiff creditor admitted applicability of, and noncompliance with, Section 9-504(3), debtor will be entitled to any loss and, in any event, since the car is a consumer good, to "an amount not less than the credit service charge plus ten per cent of the principal amount of the debt or the time price differential plus ten per cent of the cash price." Section 9-507(1). Debtor contended the sale price was "grossly inadequate" which, if proved, may allow greater recovery, but the factor that a better price was obtainable at a different time or in a different method does not of itself establish that the sale was not commercially reasonable. Section 9-507(2).]

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